

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA                    )  
  )  
v.    )     CR No. 05-30034-MAP  
  )  
JOSE RODRIGUEZ,                            )  
                  Defendant                    )

**DEFENDANT'S MOTION TO COMPEL DISCOVERY OF DEA LABORATORY FILE**

Defendant Jose Rodriguez ("Rodriguez") moves the Court pursuant to Rule 16(F) of the Federal Rules of Criminal Procedure and Local Rule 116.3(G) for an order compelling the Government to produce the following documents:

all documentary evidence related to the testing of the substances allegedly obtained from Jose Rodriguez which testing is summarized in DEA Forms 7 dated March 4 and 10, 2005.

- a. the complete DEA laboratory file concerning the analyses of the substances;
- b. bench notes of the analysts performing the laboratory tests on the substances allegedly obtained from Rodriguez;
- c. any publications, notes or memoranda upon which any government expert relied in forming an opinion as to the composition and identification of the substances examined;
- d. all analytical data which is relevant to the identification of the substance tested;
- e. all analytical data which is relevant to the quantity of the substance tested;
- f. all worksheets, sequence tables, quality control data and target ranges related to the substance tested.

In support of this motion Rodriguez states as follows:

1. On or about July 2, 2005 the Government sent to undersigned counsel an automatic discovery packet which included single page DEA laboratory reports dated March 4 and 10, 2005 which stated in summary fashion that the substances allegedly obtained from Rodriguez contained "cocaine Base." See attached Exhibits A and B.

2. On or about July 25, 2005, undersigned counsel sent a letter to the Government requesting additional discovery materials including the DEA laboratory materials listed above.

3. On or about July 28, 2005, the Government, without explanation, advised undersigned counsel by letter that it was declining to produce the DEA laboratory documents.

4. United States District Judge Michael A. Ponsor has held that the Government must prove beyond a reasonable doubt that a defendant distributed "crack" cocaine as opposed to some other form of cocaine base, in order for the mandatory minimum sentence to be imposed under 21 U.S.C. § 841(b)(1)(b)(iii). United States v. Thomas, 360 F. Supp. 2d 238, 03-CR-30033-MAP (D. Mass. 2005).

5. The presence of sodium bicarbonate in the substance is one signature for "crack" cocaine. Thomas, 360 F. Supp. 2d at 240.

6. The DEA Forms 7 in this case state only that the substances tested positive for cocaine base without any reference to the testing procedure or the presence of sodium bicarbonate.

7. Upon information and belief, the DEA laboratory maintains the requested documents regarding the testing of questioned substances. Discovery of those documentary materials would reveal the level of proof that the substance is "crack" cocaine as opposed to some other form of cocaine base. Therefore, the requested materials are material to the preparation of Rodriguez's defense and are discoverable under Rule 16(F)(iii) of the Federal Rules of Criminal Procedure.

8. Undersigned counsel has conferred with Assistant U.S. Attorney Todd Newhouse to attempt to eliminate or narrow the areas of disagreement.

WHEREFORE, Rodriguez respectfully requests that the Court enter an order compelling the Government to produce the requested materials.

Respectfully submitted,  
Defendant Jose Rodriguez,  
By His Attorney,

Dated: August 10, 2005

/s/ C. Jeffrey Kinder  
C. Jeffrey Kinder, BBO# 563890  
FIERST, PUCCI & KINDER LLP  
64 Gothic Street, Suite 4  
Northampton, MA 01060-3042  
(413) 584-8067  
(413) 585-0787 (facsimile)

CERTIFICATE OF SERVICE

I, C. Jeffrey Kinder, hereby certify that a true copy of the above document was served upon the attorney of record for each other party by electronic notification on August 10, 2005.

/s/ C. Jeffrey Kinder  
C. Jeffrey Kinder, Esquire

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Read instructions on Reverse before completing.

Department of Justice  
Laboratory Administration

REPORT OF DRUG PROPERTY COLLECTED, PURCHASED OR SEIZED

1. a. ☒ Seized (Check) ☒ Purchase ☐ Seizure ☐ Free Sample  
b. ☐ Seizure ☐ Money Flashed ☐ Compliance Sample (Non-Criminal)  
c. ☐ External Body Carry ☐ Other (Specify)

2a. FILE NO. 245D-BG-91441  
2b. PROGRAM CODE CEI  
3. G-DEP ID  
5. FILE TITLE Operation Dethrone  
7. DATE PREPARED 2/17/05  
8. GROUP NO. Springfield RA/WMGTF

4. WHERE OBTAINED (City, State/Country) Springfield, MA  
4b. DATE OBTAINED 1/19 - 24/05  
6b. REFERRAL  
☐ Case No. OR ☐ Seizure No.  
FERRING AGENCY (Name) FBI

10. FDIN (8 characters)	11. ALLEGED DRUGS	12. MARKS OR LABELS (Describe fully)	APPROX. GROSS QUANTITY		15. Purchase Cost
			13. Seized	14. Submitted	
	crack cocaine	None	28.00gr	28.00gr	\$180.00
	crack cocaine	None	30.00gr	30.00 gr	\$360.00
	crack cocaine	None	35.00gr	35.00gr	\$360.00

AS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG ? ☒ NO (included above) ☐ YES (if Yes, enter exhibit no. and describe original container fully)

REMARKS:  
-Exh. 89 was purchased by "Starkist" from JOSE ALICEA, AKA King Bebe, on 1/19/05 in Springfield, MA.  
-Exh. 90 was purchased by "Starkist" from JOSE ALICEA, AKA King Bebe and Jose Rodriguez, AKA King Gringo on 1/20/05 in Springfield, MA.  
-Exh. 91 was purchased by "Starkist" from JOSE RODRIGUEZ, AKA King Gringo on 1/24/05 in Springfield, MA.

SUBMITTED BY SPECIAL AGENT (Signature) Mark S. Karangekis  
18. APPROVED BY (Signature & Title) SSRA Michael G. O'Reilly

LABORATORY EVIDENCE RECEIPT REPORT			
20. RECEIVED FROM (Signature & Date)		21. Print or Type NAME and TITLE	
3 6-7-52 7905-7656			
23. RECEIVED BY (Signature & Date)		24. Print or Type NAME and TITLE	
2/22/05		Thomas M. Blackwell ET	
25. Broken <input checked="" type="checkbox"/> Unbroken			

LABORATORY REPORT			
ANALYSIS SUMMARY AND REMARKS			
Exhibit #89 contains cocaine base.		Net Wt. = 2.6 g	
Gross Wt. = 28.7 g			
Exhibit #90 contains cocaine base.		Net Wt. = 8.7 g	
Gross Wt. = 33.3 g			
Exhibit #91 contains cocaine base.		Net Wt. = 8.9 g	
Gross Wt. = 34.3 g			

056

27. Lab. No.	28. ACTIVE DRUG INGREDIENT (Established or Common Name)	CONCENTRATION			32. AMT. OF PURE DRUG	33. RESERVE
		29. Strength	30. Measure	31. Unit		
39 170414	cocaine base	71	%		1.8 g	2.3 g
40 170416	cocaine base	79	%		6.8 g	8.1 g
41 170417	cocaine base	73	%		6.4 g	8.1 g
ANALYST (Signature) FLORENCE WONG		35. TITLE FORENSIC CHEMIST			36. DATE COMPLETED 3/4/05	
APPROVED BY (Signature & Date) THOMAS M. BLACKWELL		38. TITLE LABORATORY DIRECTOR			39. LAB. LOCATION NEW YORK	



Department of Justice  
Enforcement AdministrationRead Instructions on Reverse  
before completing.

## REPORT OF DRUG PROPERTY COLLECTED, PURCHASED OR SEIZED

HOW OBTAINED (Check) <input checked="" type="checkbox"/> Purchase <input type="checkbox"/> Seizure <input type="checkbox"/> Free Sample <input type="checkbox"/> Lab. Seizure <input type="checkbox"/> Money Flashed <input type="checkbox"/> Compliance Sample (Non-Criminal) <input type="checkbox"/> Internal Body Carry <input type="checkbox"/> Other (Specify)		2a. FILE NO. 245D-BS-91441-Spring	2b. PROGRAM CODE CEI	3. G-DEPID		
WHERE OBTAINED (City, State/Country) Springfield, MA.		4b. DATE OBTAINED 2/2 - 2/17/05	5. FILE TITLE Operation Dethrone			
REFERRING AGENCY (Name) FBI		6b. REFERRAL <input type="checkbox"/> Case No. OR <input type="checkbox"/> Seizure No. No.	7. DATE PREPARED 2/18/05	8. GROUP NO. Springfield RA		
Exhibit No.	10. FDIN (8 characters)	11. ALLEGED DRUGS	12. MARKS OR LABELS (Describe fully)	APPROX. GROSS QUANTITY		15. Purchase Cost
				13. Seized	14. Submitted	
5		crack cocaine	None	31.00gr	31.00gr	\$260.00
5		crack cocaine	None	34.00gr	34.00gr	\$350.00
7 +		crack cocaine	None	33.00gr	33.00gr	\$360.00

WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☒ NO (included above) ☐ YES (if Yes, enter exhibit no. and describe original container fully)

## MARKS:

Ex. 95 was purchased by "Starkist" from Danny Ross, AKA King Old Dirty on 2/2/05 in Springfield, MA.

Ex. 96 was purchased by "Starkist" from Luis M. Biaggi, AKA King Biaggi on 2/8/05 in Holyoke, MA.

Ex. 97 was purchased by "Starkist" from Jose Rodriguez, AKA King Gringo on 2/17/05 in Springfield, MA.

SUBMITTED BY SPECIAL AGENT (Signature) Mark S. Karangekis	18. APPROVED BY (Signature & Title) SSRA Michael G. O'Reilly
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## LABORATORY EVIDENCE RECEIPT REPORT

NO. PACKAGES 3	20. RECEIVED FROM (Signature & Date) 675279057656	21. Print or Type NAME and TITLE
SEAL Broken <input checked="" type="checkbox"/> Unbroken <input type="checkbox"/>	23. RECEIVED BY (Signature & Date) 2/22/05	24. Print or Type NAME and TITLE Theresa M. ...

MR 3/14/05

## LABORATORY REPORT

## ANALYSIS SUMMARY AND REMARKS

Exhibit #95 contains cocaine base.

Gross Wt. = 30.7 g

Net Wt. = 5.5 g

Exhibit #96 contains cocaine base.

Gross Wt. = 35.0 g

Net Wt. = 9.8 g

Exhibit #97 contains cocaine base.

Gross Wt. = 33.8 g

Net Wt. = 8.5 g

057

Exhibit No.	27. Lab. No.	28. ACTIVE DRUG INGREDIENT (Established or Common Name)	CONCENTRATION			32. AMT. OF PURE DRUG	33. RESERVE
			29. Strength	30. Measure	31. Unit		
95	170420	cocaine base	74	%		4.0 g	5.1 g
96	170421	cocaine base	63	%		6.1 g	9.3 g
97	170422	cocaine base	55	%		4.6 g	7.9 g

1. ANALYST (Signature) FLORENCE WONG	35. TITLE FORENSIC CHEMIST	36. DATE COMPLETED 3/10/05
7. APPROVED BY (Signature & Date) THOMAS N. BLACKWELL	38. TITLE LABORATORY DIRECTOR	39. LAB. LOCATION NEW YORK

EA Form

7

Previous edition dated 4/90 may be used until stock is exhausted.

1 - Prosecution